



Billing Code 3410-08-P

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

[Docket No. FCIC-14-0004]

RIN 0563-AC44

Common Crop Insurance Regulations; Macadamia Tree Crop Insurance Provisions and  
Macadamia Nut Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) finalizes the Common Crop Insurance Regulations, Macadamia Tree Crop Insurance Provisions and the Macadamia Nut Crop Insurance Provisions. The intended effect of this action is to provide policy changes and to better meet the needs of the producers. The proposed changes will be effective for the 2016 and succeeding crop years for macadamia trees and for the 2017 and succeeding crop years for macadamia nuts.

DATES: This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION  
IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Tim Hoffmann, Director, Product Administration and Standards Division, Risk Management Agency, United States Department of Agriculture, Beacon Facility, Stop 0812, Room 421, P.O. Box 419205, Kansas City, MO 64141-6205, telephone (816) 926-7730.

## SUPPLEMENTARY INFORMATION:

### Executive Order 12866

The Office of Management and Budget (OMB) has determined that this rule is not-significant for the purpose of Executive Order 12866 and, therefore, it has not been reviewed by OMB.

### Paperwork Reduction Act of 1995

Pursuant to the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the collections of information in this rule have been approved by OMB under control number 0563-0053.

### E-Government Act Compliance

FCIC is committed to complying with the E-Government Act of 2002, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

### Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

### Executive Order 13132

It has been determined under section 1(a) of Executive Order 13132, Federalism, that this rule does not have sufficient implications to warrant consultation with the States. The provisions

contained in this rule will not have a substantial direct effect on States, or on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

#### Executive Order 13175

This rule has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. The review reveals that this regulation will not have substantial and direct effects on Tribal governments and will not have significant Tribal implications.

#### Regulatory Flexibility Act

FCIC certifies that this regulation will not have a significant economic impact on a substantial number of small entities. Program requirements for the Federal crop insurance program are the same for all producers regardless of the size of their farming operation. For instance, all producers are required to submit an application and acreage report to establish their insurance guarantees and compute premium amounts, and all producers are required to submit a notice of loss and production information to determine the amount of an indemnity payment in the event of an insured cause of crop loss. Whether a producer has 10 acres or 1000 acres, there is no difference in the kind of information collected. To ensure crop insurance is available to small entities, the Federal Crop Insurance Act authorizes FCIC to waive collection of administrative fees from limited resource farmers. FCIC believes this waiver helps to ensure that small entities are given the same opportunities as large entities to manage their risks through the use of crop insurance. A Regulatory Flexibility Analysis has not been prepared since this regulation does not have an impact on small entities, and therefore, this regulation is exempt

from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605).

#### Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

#### Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

#### Executive Order 12988

This final rule has been reviewed in accordance with Executive Order 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. With respect to any direct action taken by FCIC or action by FCIC to require the insurance provider to take specific action under the terms of the crop insurance policy, the administrative appeal provisions published at 7 CFR part 11 must be exhausted before any action against FCIC for judicial review may be brought.

#### Environmental Evaluation

This action is not expected to have a significant economic impact on the quality of the human environment, health, or safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

#### Background

This rule finalizes changes to the Common Crop Insurance Regulations (7 CFR part 457), Macadamia Tree Crop Insurance Provisions and Macadamia Nut Crop Insurance

Provisions that were published by FCIC on August 1, 2014, as a notice of proposed rulemaking in the Federal Register at 79 FR 44719-44722. The public was afforded 60 days to submit comments after the regulation was published in the Federal Register.

A total of 23 comments were received from two commenters. The commenters were an insurance service organization and a producer association.

The public comments received regarding the proposed rule and FCIC's responses to the comments are as follows:

#### Macadamia Tree Crop Insurance Provisions

##### Section 1

Comment: One commenter agrees with the proposal to add definitions for “damaged” and “scaffold limb.”

Response: FCIC thanks the commenter for its review and its support of the addition of these two definitions.

##### Section 2

Comment: One commenter states the first sentence in redesignated paragraph (a) states that optional units by legal description or by irrigated/non-irrigated practices are not applicable; and the second sentence states that “...Optional units may be established ONLY if each optional unit is located on non-contiguous land, unless otherwise allowed by written agreement” [emphasis added]. The commenter states that neither sentence addresses the possibility of optional units for organic and conventional practices, which is allowed according to section 34(c)(3) of the Basic Provisions. As written, this provision appears to mean that separate optional units for organic and conventional acreage would be possible only if they happen to be

on non-contiguous land or unless allowed by written agreement. If that is the intention, it would be clearer to include “organic practices” in the first sentence as not applicable. If it is not intended to exclude optional units by organic/conventional practices, the second sentence should be revised to clarify that optional units by non-contiguous land may be “in addition to” the optional units by organic/conventional allowed in section 34(c)(3) of the Basic Provisions.

Response: FCIC intends for optional units to be allowed on acreage located on non-contiguous land or on acreage grown and insured under an organic farming practice. FCIC does not intend to require that optional units distinguished by organic and conventional practices must also be located on non-contiguous land. FCIC has revised the provisions accordingly.

Comment: One commenter states the “Background” explains that the proposal to remove the 80-acre minimum requirement for optional units is because most macadamia tree orchards are smaller than that, and the other proposed changes (requiring a clear and discernible break, and records) “...will mitigate any potential abuse from this change.” The commenter has no objection to this change.

Response: FCIC agrees with the commenter and thanks it for its support. FCIC also notes that the planned removal of this 80-acre optional unit minimum requirement was inadvertently described in the proposed rule summary. The discussion of this requirement removal was also described in specific detail under the description of changes for this rule at Section 2. Therefore, FCIC removed this inadvertent reference from the final rule summary because specific mention of this proposal in the proposed rule summary was inadvertent and duplicative. This removal of the duplicative language from the proposed rule summary does not affect the commenter’s agreement with the proposal: FCIC continues to agree with the

commenter, and the proposal as originally proposed has been adopted.

Comment: One commenter states if the current section 2(a) is deleted as proposed, then Basic Provisions sections 34(b)(1), (3) and (4) will apply, meaning optional units will require a clear and discernible break, and acceptable and verifiable records. The commenter has no objection to this change.

Response: FCIC agrees with the commenter that by deleting section 2(a) of the Macadamia Tree Crop Provisions, sections 34(b)(1), (3) and (4) of the Basic Provisions will apply. FCIC thanks the commenter for its support.

Comment: One commenter states the proposed change would require that optional units must have a “clear and discernable break between optional units.” This is clarified further by stating “optional units may be established only if each optional unit is located on non-contiguous land.” There is no clear definition of what constitutes a “clear and discernable break.” It does disqualify optional units determined by “section, section equivalent, or FSA farm serial number and by irrigated and non-irrigated practices.”

Without a clear specification for what actually fits their definition for the “clear and discernable break,” there is great potential for a broad interpretation from the Risk Management Agency that would ultimately prohibit larger operations from using optional units at all. Since large operations have significantly varied conditions over the span of their operations that can cause production loss over only certain sections (such as differences in rainfall, elevation, soil-type, disease and pest-incidence, etc.), optional units are important and necessary to provide operations with some security to protect from losses. Without the optional units, an operation becomes far more vulnerable, since only significant orchard-wide production losses would ever

qualify for a claim. It becomes financially infeasible to even have insurance for many producers with such limitations. This rule change should not pass without explicit definitions of what would qualify as a “clear and discernible break.”

Based on how the insurance companies had treated boundaries in the past with regards to the formation of optional units, a clear and discernible break should be defined by a designated production area (for instance, a block or field) with a set acreage that has enough production statistics for the APH to qualify for insurance. For instance, in our operation, we have had the same fields that have remained consistent since planting. Each field should be able to qualify as a block, as production statistics are kept for each field separately.

Response: FCIC agrees with the commenter that the proposed change to remove paragraph (a) requires optional units to have a clear and discernible break. Paragraph (a) states sections 34(b)(1), (3) and (4) of the Basic Provisions are not applicable. These sections of the Basic Provisions state, among other things, that the crop must be planted in a manner such that there is a clear and discernible break between optional units. By removing paragraph (a), sections 34(b)(1), (3) and (4) of the Basic Provisions now become applicable. Under the current policy, insureds who utilize optional units can manipulate their unit boundaries to maximize indemnities because there is no current requirement for discernible breaks between units. FCIC believes this requirement will minimize program abuse as it relates to unit division. Based on a previous comment, FCIC has revised Section 2 to clarify that optional units are allowed by non-contiguous land or by organic and conventional acreage, thereby giving producers multiple options to insure their acreage under optional units. FCIC does not define “clear and discernible break” in its policy; however, in general, when a term is not specifically defined in the policy,

its common or ordinary meaning may be applicable as found in a standard dictionary.

Examples of a clear and discernible break are highways, railroads and rivers. No change has been made.

### Section 7

Comment: One commenter recommends deleting the first comma in the following sentence: “In lieu of the provisions in section 9 of the Basic Provisions, that prohibit insurance attaching to a crop planted with another crop...” The commenter says this change will be consistent with a similar change proposed in section 8 of the Macadamia Nut Crop Provisions.

Response: FCIC agrees with the commenter. The comma is not necessary and its removal does not change the meaning of the provision. FCIC has revised the provisions accordingly.

### Section 10

Comment: One commenter states the proposed rule adds a phrase about destroyed trees in the following phrase so it would read: “...allow us to inspect all insured acreage before pruning any damaged trees, removing any damaged trees, or removing any destroyed trees.” This can be left as written, but consider if either of these alternatives might be preferable:

- “...before pruning or removing any damaged trees, or removing any destroyed trees.”

This keeps the current wording about the two possible actions for damaged trees, and adds the new phrase about removing destroyed trees.

- “...before pruning any damaged trees, or removing any damaged or destroyed trees.”

This would put “pruning” in one phrase (applying only to damaged trees) and “removing” in another (whether the trees are damaged or destroyed).

Response: FCIC appreciates the recommendations. However, FCIC believes its proposed language offers the option of the possibilities least likely to create misunderstanding because each action word is individually paired with the tree type (damaged vs. destroyed) for which the action is prohibited.

Comment: One commenter states that, concerning halting of cleanup following tree damage, during the most recent experience with Hurricane Iselle, it took the insurance companies around two weeks, and in some cases longer, to fly appraisers to Hawaii to assess storm damage. For any agricultural operation, especially during harvest season, waiting that long to remove damaged trees, branches, and other debris can pose not only safety hazards, but can also limit movement throughout orchards and can lead to crop loss due to the inability of harvest equipment and crews to safely traverse through the areas of damage.

The majority of the insurance companies are located on the continental United States, so they typically wait to hear from all of the insured operations in Hawaii before deploying loss adjusters. This is due to the distance and the large expense of sending people back and forth. In light of these limitations, it is not practical or fair to make farms wait so long before cleaning up. The alternatives to these rule changes would be either to not change this rule or to add to the change a requirement for tree loss appraisers to be on-site no later than three days after notice of a major crop or tree loss.

Response: FCIC understands that it may take insurance companies additional time to travel to Hawaii than to travel within the continental United States. This inspection requirement is consistent with the provisions in other Crop Provisions, such as the Hawaii Tropical Tree Crop Provisions, which also provide coverage for crops in Hawaii. Travel could be difficult

after a catastrophic event, such as a named storm. Therefore, a regulatory provision always requiring insurance company presence on-site within three days after notice of a loss is inappropriate in part because not all circumstances will always allow such Loss Adjuster to arrive within that timeframe. A three-day arrival expectation may be appropriate in some, though not necessarily all, instances of loss. Insurance companies are required to arrive onsite after receiving a notice of loss within appropriate time frames. For example, the current Loss Adjustment Manual (LAM), in paragraph 41(A)(3), provides guidance that insurance companies must assign notice of damage to adjusters as quickly as possible to assure timely service to the insured. FCIC will, as it generally does in widespread loss situations, monitor the performance of and loss adjustment service provided by insurance companies in responding to a loss event.

#### Section 11

Comment: One commenter states with the example added in section 11(b)(4), consider if the parenthetical example in section 11(b)(3)(iii) is still useful or if it could be deleted. If it is kept, consider deleting the phrase “...specified in section 11(b)(3)...” since it is part of 11(b)(3).

Response: Given that no change to this provision was proposed, and the public was not provided an opportunity to comment, FCIC declines to adopt the recommendation in the final rule. No change has been made.

Comment: One commenter states the calculations in paragraph (b)(4) at step (3)(ii) and (iii) do not appear to correspond to the description of those steps in paragraph (b)(3) because the example includes additional calculations as well. The example appears to work out correctly, but it might be worth considering the following:

- In paragraph (b)(4) at step (3)(ii), if the calculation of the “actual percent of loss”

should be identified as such, or included in the introductory paragraph instead; and/or

- In paragraph (b)(4) at step (3)(iii), if the calculation of the dollar amount of loss [“...and \$58,500 total amount of insurance x 6.0 percent loss = \$3,510 loss”] should be better identified [since step (3) says only to divide the previous result by the coverage level] or perhaps moved to be part of the final step (4).

Response: FCIC agrees with the commenter that the steps in paragraph (b) do not correspond with the calculations in the settlement of claim example. FCIC agrees with both of the commenters’ recommendations to clarify the steps in paragraph (b). FCIC has revised the provisions as recommended, has made additional clarifications in the steps in paragraph (b), and has revised the settlement of claim example at redesignated paragraph (b)(5) to reflect the revisions in paragraph (b).

Comment: One commenter recommends, in the introduction of paragraph (b)(4) of the settlement of claim example, to add a hyphen in “Thirty five trees...” so it reads, “Thirty-five trees...”

Response: FCIC agrees with the commenter and has revised the provisions in redesignated paragraph (b)(5) accordingly.

#### Macadamia Nut Crop Insurance Provisions

##### Section 1

Comment: One commenter recommends correcting the spelling of “floatation” to “flotation” in the definition of “floaters.”

Response: FCIC agrees with the commenter, even though “floatation” is an accepted spelling of “flotation,” and has revised the provisions accordingly.

Comment: One commenter states the definition of “wet in-shell” is revised to say that it excludes floaters and peewees, which FCIC claims are terms commonly used in the Macadamia industry. While the terms are sometimes used, there are some issues with the suggested use of these terms and how the FCIC defines them. For starters, there was no consultation with processors or husking operations to ascertain what the industry-accepted definition of “wet in-shell” is. Furthermore, the term “floater” has a different definition to the Macadamia nut industry than is suggested by FCIC and in actuality is seldom used. This is primarily because float grading is not a common practice for Macadamia nut husking or processing and when it is employed, it is typically performed at a different stage in the husking operation than what FCIC has suggested in their interpretation of the rules. It is believed that the reason that the FCIC is recommending this change is in response to a claim dispute, in order to validate FCIC’s stance against the industry standards. The commenter states FCIC would essentially create an ultimatum for the industry that producers would either need to request their processors to change their processing methods or face the penalty of not qualifying for crop insurance. The cost of making infrastructural changes in order to comply with these proposed changes would be high, so many processors may be discouraged from making these changes, given that many only purchase nuts from producers and have no stake in the rules governing crop insurance. The rule change would essentially create an impossible standard for producers to ever qualify for crop insurance.

Though it was stated in the past that the industry was consulted in the development of the Macadamia nut policy, the policy as it is currently written does not reflect this. It is recommended that 1) the definition of “wet in-shell” be amended, 2) the industry be given an

opportunity to provide input on how things operate in Hawaii, and 3) how the policy could be amended to better represent reality.

The revision to the definition of “wet in-shell” should be according to what is common to the industry. Wet in-shell (WIS) nuts are the result after husking has been implemented; this WIS weight is considered a gross number; the “extraneous materials” percentage is used to calculate the amount to subtract from the WIS number to come up with a net WIS. The “extraneous materials” percentage or trash is calculated in a quality analysis lab using samples obtained from the husking operation. While sample collection may vary from one operation to the next, this method of determining the net WIS is basically the same across the industry.

Response: FCIC disagrees with the commenter’s understanding of changes to the “wet in-shell” definition. The language FCIC proposes to incorporate in the Crop Provisions definition is derived from the Special Provisions as well as the Macadamia Nut Loss Adjustment Standards Handbook (LASH). The Special Provisions and LASH are part of the policy or are used to service the policy. FCIC is not changing the definition meaning by incorporating the Special Provisions and LASH statements into the definition. The Special Provisions statement has been in effect since the 2006 crop year and the LASH definition has been in effect since the 2005 crop year.

The commenter says they believe the reason FCIC is recommending the change to the definition of “wet in-shell” is in response to a claim dispute, in order to validate FCIC’s stance against the industry standards. The commenter says FCIC would essentially create an ultimatum for the industry that producers would either need to request their processors to change their processing methods or face the penalty of not qualifying for crop insurance. The

commenter says the change would essentially create an impossible standard for producers to ever qualify for crop insurance. As mentioned in the previous paragraph, FCIC is not making a substantial change to the definition of “wet in-shell.” The primary change is to incorporate language contained in the Special Provisions and LASH that are currently in effect and have been in effect since the 2006 and 2005 crop years, respectively. Since this change is not substantial, this definition has already existed in large part, and was required for use in policy servicing, FCIC does not agree that such change creates an ultimatum for producers.

Furthermore, FCIC’s definition of “wet in-shell,” as now updated, corresponds with the definition the commenter seeks for the industry concerns. The commenter says wet in-shell nuts are the result after husking has been implemented (gross weight) and the “extraneous materials” percentage or trash is used to calculate the amount that is subtracted from the gross weight. The difference between the gross weight and the “extraneous materials” percentage or trash is the wet in-shell net weight. FCIC’s definition says the wet in-shell weight is the weight after removal of the husk (gross weight) and excluding floaters and peewees (extraneous material or trash) but prior to being dried. The industry agrees FCIC should not include floaters and peewees in the wet in-shell weight for purposes of production to count, and refers to such floaters and peewees as “trash” or “extraneous materials.” FCIC understands the comment to assume FCIC requires all macadamia nut production to be float graded using water flotation for insurance purposes. However, this assumption is incorrect. Under the policy, float grading using water flotation is only one acceptable method of determining floaters to exclude from production to count. To clarify and specifically address the commenter’s concern regarding industry practices, FCIC has specifically added to the definition of wet in-shell, through the

component definition of floaters, a reference that laboratory testing for floater determination is also acceptable as an alternative to float grading using water floatation. In sum, FCIC requires that the reported production must not include floaters and peewees, or, in other words, the weight of the trash, which the industry and FCIC now similarly define.

In the proposed rule, FCIC proposed to define the terms “floaters” and “peewees” because those terms are used in the Special Provisions statement and LASH definitions that were proposed for incorporation into the “wet in-shell” definition. Those terms were not previously defined within the Crop Provisions, but they were defined in the Macadamia Nut LASH. The LASH has contained those terms and their definitions since the 2005 crop year.

The proposed rule comment period is an opportunity for the public to provide input on changes FCIC proposes to make to the Crop Provisions. Interested parties are permitted to provide comments during that time. If the commenter had specific suggestions for recommended changes to this portion of the Macadamia Nut Crop Provisions, the commenter had an opportunity to provide specific proposed changes on this issue during the proposed rule comment period. However, FCIC has made an addition to the definition that will address the commenter’s industry concern.

Comment: One commenter recommends deleting the comma in the phrase “wet, in-shell pounds” in the definition of “production guarantee (per acre)” to match the defined term of “wet in-shell,” as was done in sections 6(d) and 11(c).

Response: FCIC agrees with the commenter that the comma should be removed from the sentence. The comma is not necessary and its removal does not change the meaning of the provision. FCIC has revised the provisions accordingly.

Comment: One commenter recommends adding a comma before the added phrase “...excluding floaters and peewees...” in the definition of “wet in-shell.”

Response: FCIC disagrees with the commenter. A comma would not add clarity.

## Section 2

Comment: One commenter states if the current paragraph (a) is deleted as proposed, then Basic Provisions section 34(b)(1) will apply, meaning optional units will require a clear and discernible break, and acceptable and verifiable records. The commenter has no objection to this change.

Response: FCIC agrees with the commenter that by deleting paragraph (a) of the Macadamia Tree Crop Provisions, section 34(b)(1) of the Basic Provisions will apply. FCIC thanks the commenter for its support.

Comment: One commenter states that the first sentence in section 2 states that optional units by legal description or by irrigated/non-irrigated practices are not applicable; and the second sentence states that “...Optional units may be established ONLY if each optional unit is located on non-contiguous land, unless otherwise allowed by written agreement” [emphasis added]. The commenter states that neither sentence addresses the possibility of optional units for organic and conventional practices, which is allowed according to section 34(c)(3) of the Basic Provisions. As written, this provision appears to mean that separate optional units for organic and conventional acreage would be possible only if they happen to be on non-contiguous land or unless allowed by written agreement. If that is the intention, it would be clearer to include “organic practices” in the first sentence as not applicable. If it is not intended to exclude optional units by organic/conventional practices, the second sentence should be

revised to clarify that optional units by non-contiguous land may be “in addition to” the optional units by organic/conventional allowed in section 34(c)(3) of the Basic Provisions.

Response: FCIC intends for optional units to be allowed on acreage located on non-contiguous land or grown and insured under an organic farming practice. FCIC does not intend to require that optional units distinguished by organic and conventional practices must also be located on non-contiguous land. FCIC has revised the provisions accordingly.

Comment: One commenter states the “Background” explains that the proposal to remove the 80-acre minimum requirement for optional units is because most macadamia tree orchards are smaller than that, and the other proposed changes (requiring a clear and discernible break, and records) “...will mitigate any potential abuse from this change.” The commenter has no objection to this change.

Response: FCIC agrees with the commenter and thanks it for its support.

### Section 3

Comment: One commenter recommends shifting the following phrase in paragraph (b): “...on the yield potential of the insured crop” from the end of the first sentence to be ahead of the list, so it would read: “...based on our estimate of the effect on the yield potential of the insured crop of the following: interplanted perennial crop; removal of trees; damage; change in practices and any other circumstance. If you fail...”

Response: Given that no change to this provision was proposed, and the public was not provided an opportunity to comment, FCIC declines to adopt the recommendation in the final rule. In addition, this language is consistent with other Crop Provisions, such as Texas Citrus Fruit and Arizona-California Citrus. No change has been made.

Comment: One commenter recommends revising the following sentence in paragraph (d), “Each crop year you must report your production from two crop years ago...” to “...from two crop years before...”

Response: Given that no change to this provision was proposed, and the public was not provided an opportunity to comment, FCIC declines to adopt the recommendation in the final rule. In addition, this language is consistent with other Crop Provisions, such as Texas Citrus Fruit and Arizona-California Citrus. No change has been made.

## Section 6

Comment: One commenter agrees the wording change from “...we may agree in writing...” to “...we may give our approval in writing...” in paragraph (d) makes it less likely for this to be taken as a reference to a written agreement.

Response: FCIC agrees with the commenter and thanks it for its support.

Comment: One commenter states the second sentence in paragraph (d) sounds a bit odd when it refers to “...approval in writing to insure ACREAGE that has not yet reached this age...”, referring to the requirement in the first sentence that the insured crop be “...grown on TREES that have reached at least the fifth growing season...” Since the second sentence goes on to say coverage on this under-age acreage can be approved “...if IT has produced at least 200 pounds of (wet in-shell) macadamia nuts per ACRE in a previous crop year”, maybe the word “acreage” is correct and no change is needed. But one possible alternative to consider might be: “...to insure acreage of trees that have not reached this age...”

Response: Given that no change to this provision was proposed, and the public was not provided an opportunity to comment, FCIC declines to adopt the recommendation in the final

rule. In addition, the original Macadamia Nut Crop Provisions are written with this language because nut production, not nut trees, is insured under these particular Crop Provisions. No change has been made.

### Section 8

Comment: One commenter states the proposal is to add the phrase “or as specified in the Special Provisions” to paragraph (a)(2), so paragraph (a)(2) would read as follows: “The calendar date for the end of the insurance period for each crop year is the second June 30<sup>th</sup> after insurance attaches, or as specified in the Special Provisions.” According to the “Background”, this “...will provide flexibility to update this date if the need arises.” The commenter does not object to providing flexibility to make the program work better, though it can also add some complexity by making the calendar date subject to change, meaning it must be looked up in the Special Provisions for the applicable county to be certain the date is unchanged.

Response: FCIC agrees with the commenter that the added phrase provides flexibility to make the program work better. This flexibility eliminates the administrative burden of revising the regulation if FCIC determines the calendar date for the end of insurance period should be different than what is stated in the Crop Provisions. In addition, the change does not add the complexity issue raised by the commenter because a policyholder must always read the Special Provisions to ensure it is aware of any changes to any issue covered by the Special Provisions, which may extend beyond changes to the end of the insurance period. No change has been made.

### **List of Subjects in 7 CFR Part 457**

Crop insurance, Macadamia tree and macadamia nut, Reporting and recordkeeping

requirements.

## Final Rule

Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation amends 7 CFR part 457 effective for the 2016 and succeeding crop years for macadamia trees and for the 2017 and succeeding crop years for macadamia nuts as follows:

### **PART 457- COMMON CROP INSURANCE REGULATIONS**

1. The authority citation for 7 CFR part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(1) and 1506(o).

2. Amend §457.130 as follows:

a. In the introductory text by removing “2011” and adding “2016” in its place;

b. In section 1 by adding in alphabetical order definitions of “Damaged” and “Scaffold limb”;

c. By revising section 2;

d. In section 3 by removing the phrase “(Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities)” in paragraphs (a) introductory text and (b);

e. In section 4 by removing the phrase “(Contract Changes)”;

f. In section 5 by removing the phrase “(Life of Policy, Cancellation, and Termination)”;

g. In section 6 introductory text by removing the phrase “(Insured Crop)”;

h. In section 7 by removing the phrase “(Insurable Acreage) of the Basic Provisions (§457.8), that prohibit” and adding in its place the phrase “of the Basic Provisions (§457.8) that prohibit”;

i. In section 8 by removing the phrase “(Insurance Period)” in paragraphs (a)

introductory text and (b) introductory text;

j. In section 9 by removing the phrase “(Causes of Loss)” in paragraphs (a) introductory text and (b) introductory text;

k. By revising section 10; and

l. In section 11:

i. By revising paragraph (b)(3);

ii. By redesignating paragraph (b)(4) as paragraph (b)(5);

iii. By adding paragraph (b)(4); and

iv. By revising newly redesignated paragraph (b)(5) and paragraphs (c) introductory text and (c)(1).

The revisions and additions read as follows:

**§457.130 Macadamia tree crop insurance provisions.**

\* \* \* \* \*

**1. Definitions**

\* \* \* \* \*

Damaged. Injury to the main trunk, scaffold limb(s), and any other subordinate limbs that reduces the productivity of the macadamia tree due to an insured cause of loss that occurs during the insurance period.

\* \* \* \* \*

Scaffold limb. A major limb attached directly to the trunk.

**2. Unit Division**

(a) Provisions in the Basic Provisions that allow optional units by section, section

equivalent, or FSA farm serial number and by irrigated and non-irrigated practices are not applicable. Optional units may be established only if each optional unit is located on non-contiguous land or grown and insured under an organic farming practice, unless otherwise allowed by written agreement.

(b) You must have provided records, which can be independently verified, of acreage and age of trees for each unit for at least the last crop year.

\* \* \* \* \*

#### 10. Duties in the Event of Damage or Loss

In addition to the requirements of section 14 of the Basic Provisions, in case of damage or probable loss, if you intend to claim an indemnity on any unit, you must allow us to inspect all insured acreage before pruning any damaged trees, removing any damaged trees, or removing any destroyed trees.

#### 11. Settlement of Claim

\* \* \* \* \*

(b) \* \* \*

\* \* \* \* \*

(3) Determine the applicable percent of loss, which is calculated as follows:

(i) Subtract the coverage level percent you elected from 100 percent;

(ii) Determine the actual percent of loss, which is determined as follows:

(A) Divide the number of trees destroyed by the total number of trees to calculate the percent loss;

(B) Divide the number of trees damaged by the total number of trees to calculate the

percent of damage;

(C) Add the results of sections 11(b)(3)(ii)(A) and (B).

(iii) Subtract the result obtained in section 11(b)(3)(i) from section 11(b)(3)(ii);

(iv) Divide the result in section 11(b)(3)(iii) by the coverage level you elected (For example, if you elected the 75 percent coverage level and your actual percent of loss was 70 percent, the percent of loss specified in section 11(b)(3) would be calculated as follows:  $100\% - 75\% = 25\%$ ;  $70\% - 25\% = 45\%$ ;  $45\% \div 75\% = 60\%$ .);

(4) Multiply the result of section 11(b)(3) by the total dollar amount of insurance obtained in section 11(b)(2); and

(5) Multiply the result in section 11(b)(4) by your share.

For example:

You select 65 percent coverage level and 100 percent of the price election on 10 acres of 9-year-old macadamia trees in the unit. Your share is 100 percent. The amount of insurance per acre is \$5,850. There are 90 trees per unit. Thirty-five trees are destroyed. Your indemnity would be calculated as follows:

(1)  $10 \text{ acres} \times \$5,850 = \$58,500$ ;

(3) (i)  $100 \text{ percent} - 65 \text{ percent} = 35 \text{ percent deductible}$ ;

(ii)  $35 \text{ destroyed trees} \div 90 \text{ total unit trees} = 38.9 \text{ percent loss}$ ;

(iii)  $38.9 \text{ percent loss} - 35 \text{ percent deductible} = 3.9 \text{ percent}$ ;

(iv)  $3.9 \text{ percent} \div 65 \text{ percent coverage level} = 6.0 \text{ percent loss}$ ;

(4)  $\$58,500 \text{ total amount of insurance} \times 6.0 \text{ percent loss} = \$3,510 \text{ loss}$ ; and

(5)  $\$3,510 \text{ loss} \times 100 \text{ percent share} = \$3,510 \text{ indemnity payment}$ .

(c) The total amount of loss will include both damaged trees and destroyed trees as follows:

(1) Any orchard with over 80 percent of the actual trees damaged or destroyed due to an insured cause of loss will be considered to be 100 percent damaged; and

\* \* \* \* \*

3. Amend §457.131 as follows:

a. In the introductory text by removing “2012” and adding “2017” in its place;

b. In section 1:

i. By adding definitions in alphabetical order of “Floaters” and “Peewees”; and

ii. By revising the definition of “Wet in-shell”;

c. By revising section 2;

d. In section 3:

i. In the introductory text and paragraph (b) introductory text by removing the phrase “(Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities)”;

ii. In paragraph (b)(4) introductory text by removing the word “anytime” and adding in its place the phrase “any time”; and

iii. By revising paragraph (d);

e. In section 4 by removing the phrase “(Contract Changes)”;

f. In section 5 by removing the phrase “(Life of Policy, Cancellation, and Termination)”;

g. In section 6:

i. By removing the phrase “(Insured Crop)” in the introductory text; and

ii. By revising paragraph (d);

h. In section 7:

i. By removing the phrase “(Insurable Acreage)”; and

ii. By removing the comma after the phrase “Basic Provisions (§457.8)”;

i. In section 8:

i. By removing the phrase “(Insurance Period)” in paragraphs (a) introductory text and

(b) introductory text; and

ii. By revising paragraph (a)(2);

j. In section 9 by removing the phrase “(Causes of Loss)” in paragraphs (a) introductory text and (b) introductory text;

k. In section 10 introductory text by removing the phrase “(Duties in the Event of Damage or Loss)”;

l. In section 11:

i. In paragraph (b)(4) by removing the phrase “if applicable, (see section 11(c))” and adding in its place the phrase “if applicable (see section 11(c)),”;

ii. By adding a settlement of claim example after paragraph (b)(7); and

iii. In paragraph (c) by removing the phrase “(wet, in-shell pounds)” and adding in its place the phrase “(wet in-shell pounds)”.

The revisions and additions read as follows:

**§457.131 Macadamia nut crop insurance provisions.**

\* \* \* \* \*

**1. Definitions**

\* \* \* \* \*

Floaters. Inedible, husked “field run” nuts identified by water flotation or laboratory testing.

\* \* \* \* \*

Peewees. Mature and immature wet in-shell nuts that are smaller than 16 mm (5/8 inch) in diameter.

\* \* \* \* \*

Wet in-shell. The weight of the macadamia nuts as they are removed from the orchard with the nut meats in the shells after removal of the husk and excluding floaters and peewees but prior to being dried.

## 2. Unit Division

Provisions in the Basic Provisions that allow optional units by section, section equivalent, or FSA farm serial number and by irrigated and non-irrigated practices are not applicable. Optional units may be established only if each optional unit is located on non-contiguous land or grown and insured under an organic farming practice, unless otherwise allowed by written agreement.

## 3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities

\* \* \* \* \*

(d) Instead of reporting your macadamia nut production for the previous crop year, as required by section 3 of the Basic Provisions, there is a one-year lag period. Each crop year you must report your production from two crop years ago, e.g., on the 2016 crop year production report, you will provide your 2014 crop year production.

\* \* \* \* \*

## 6. Insured Crop

\* \* \* \* \*

(d) That are grown on trees that have reached at least the fifth growing season after being set out or grafted. However, we may give our approval in writing to insure acreage of trees that has not reached this age if it has produced at least 200 pounds of (wet in-shell) macadamia nuts per acre in a previous crop year; and

\* \* \* \* \*

## 8. Insurance Period

(a) \* \* \*

(2) The calendar date for the end of the insurance period for each crop year is the second June 30th after insurance attaches, or as specified in the Special Provisions.

\* \* \* \* \*

## 11. Settlement of Claim

\* \* \* \* \*

(b) \* \* \*

(7) \* \* \*

For example:

You select the 65 percent coverage level and 100 percent of the price election on 10 acres of macadamia nuts in the unit. Your share is 100 percent. Your production guarantee (per acre) is 4,000 pounds. The price election is \$0.78. You are able to harvest 25,000 pounds. Your indemnity would be calculated as follows:

(1) 10 acres x 4,000 pounds = 40,000 pounds guarantee;

(2) 40,000 pounds x \$0.78 price election = \$31,200 total value of guarantee;

(4) 25,000 pounds production to count x \$0.78 price election = \$19,500 value of production to count;

(6) \$31,200 total value of guarantee - \$19,500 value of production to count = \$11,700 loss; and

(7) \$11,700 loss x 100 percent share = \$11,700 indemnity payment.

\* \* \* \* \*

Signed in Washington, D.C., on April 9, 2015.

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Brandon Willis,  
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Federal Crop Insurance Corporation.  
[FR Doc. 2015-08690 Filed: 4/15/2015 08:45 am; Publication Date: 4/16/2015]